IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1067 OF 2005

Yallappa Ganu Patil
(since deceased through heirs
and legal representatives)
Krishnath Yallappa Patil & ors. ... Appellants

V/s

Balasaheb @ Anandrao Annaso Ghorpade
& ors. ... Respondents

Mr. Pratap Patil for the appellants.

Mr. T.S. Ingale for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 27TH SEPT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur dated 27.1.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Kagal in R.C.S. No. 61 of 1996, dated 11.12.2003 decreeing the plaintiffs' suit.

2. I have heard the learned counsel for both sides. Perused the record.

3. The plaintiffs filed the suit for redemption of mortgage of agricultural land Gat No.69, admeasuring 0.71 Are of village Galgale, Tal. Kagal, Dist. Kolhapur. The plaintiffs have alleged that the suit property was having old Registered Survey No.12, Hissa No.2 and Hissa No.4 which is the ancetral joint family property. Plaintiffs' father Annasaheb Bhagwantrao Ghorpade accepted Rs.2000/- on 10.7.1967 from defendants and executed the mortgage by conditional sale in favour of defendants. Redemption period is after 5 years and within 5 years after execution of the instrument. The transaction is and was purely mortgage transaction. On the date of mortgage, the possession was delivered to defendants. Thus defendants are in possession of the suit property as mortgagee. The plaintiffs have further alleged that plaintiffs' father deceased Annasaheb Ghorpade tendered the mortgage amount but defendants avoided to redeem it. In the year 1989, Annasaheb died. Notice was issued on 14.6.1996 but the defendants avoided to redeem the suit property and hence the suit was filed.

Defendants contested the suit inter-alia denying all the allegations submitting that the suit transaction was

outright sale and as such the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that the transaction was a mortgage transaction and plaintiffs were ready and willing to perform his part of the contract and, therefore, the suit came to be decreed.

The appeal was carried to the District Court at Kolhapur. The learned Addl. District Judge, after hearing both parties, concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this case. The only case relates to the interpretation of the document on the basis of available facts and circumstances. The learned counsel for the appellants sought to raise issue to the effect that the suit document Exh.69 dated 10.7.1967 does not create expressly or by implication the relationship of debtor and creditor nor was the amount paid by the appellant

made a charge on the land nor is there any provision for payment of interest and possession of land was also handed over to the appellants. Therefore, it cannot be said to be the mortgage by conditional sale and it was in fact outright sale. In this connection, at the outset, it may be noted that this issue also is the issue of fact which is related to the interpretation of the impugned document which has been done by both the Courts below while recording concurrent findings to the effect that the said suit transaction was mortgaged by conditional sale. The lower appellate Court has recorded its cogent reasons in order to support his view to the effect that it was not outright sale but it was mortgage transaction. It was observed by the lower appellate Court that the nomenclature of the document is sale deed for the period of 10 years and sale and repurchase are included in this case in the document. Therefore, according to the lower appellate Court, rightly the burden was on the defendants to prove that it was outright sale with option to repurchase the same. Recitals of the document showed that after 5 years from the document and within 10 years from the document, the father of the plaintiff had right to get "**released**" (emphasis supplied) the suit property. However, the word repurchase is not mentioned. The word "**release**" is

to be used in respect of the loan transaction. However, it was mentioned that if the amount is not repaid within a time, it will be treated that the said document is a permanent sale deed, which shows that there was a clause of repayment and one had to repay the loan. Under the circumstances, the reasoning adopted by the lower appellate Court cannot be faulted with. The learned counsel for the respondents brought to my notice the ruling of the Supreme Court in the case of **Vidyadhar v/s Manikrao & anr., reported in (1999) 3 SCC 573.** The ratio thereof is also applicable to the present case.

6. It is needless to mention that, in a case wherefrom a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court and adopting any other approach is not permissible. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec. 100 of C.P.C. This is especially so when both the Courts below are seen to have appreciated the entire evidence in proper perspective and, therefore, I hold that it would brook no interference.

7. In the result, the appeal has no merit and stands

dismissed with no order as to costs. Consequently, Civil Application No. 1581 of 2005 also stands dismissed with no order as to costs.

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